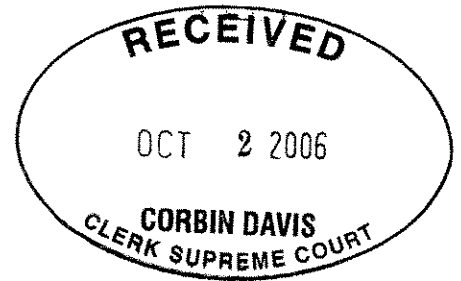


J. MICHAEL BUCKLEY
211 West Fort Street, Suite 2001
Detroit, Michigan 48226

September 29, 2006

Corbin R. Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909



Re: Comments Re: ADM File No. 2005-19

Dear Mr. Davis:

Thank you for affording me the opportunity to comment on proposed changes to the Michigan Court Rules insofar as they relate to jury practice in Michigan Courts. In over 22 years of trial practice, I have tried myriad jury trials in both state and federal courts, as a private practitioner and as a prosecutor. Several of the proposed rule changes concern me as both a lawyer and a citizen.

Rule 2.513(M)

I am most troubled by proposed Rule 2.513(M), which would allow judges to "fairly and impartially sum up the evidence and comment to the jury about the weight of the evidence." Were one to delete the reference to impartiality, the proposed language sounds dangerously close to the definition of a final argument! Jurors are influenced by any judicial comments, especially those relating to the evidence.

Inviting judges to comment on the evidence and its weight is to invite allegations of judicial bias and error. Any judicial commentary on the evidence could influence the outcome of the trial, even if such consequences were wholly unintended.

Furthermore, it is the role of the trial attorneys alone, as advocates, to argue and comment upon the weight of the evidence, and it is the role of the jury as fact finders to determine what weight to give to any evidence. I was extremely gratified to see that a spectrum of others concur with my view, ranging from Shannon Pike (07/17/06), a lay person, to esteemed members of the Wayne County Circuit Court bench (09/11/06).

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Rule 2.513(G)

Like the esteemed judges from Wayne County, I also strongly oppose the proposed rule which relates to the scheduling of expert testimony. It is difficult to imagine how a trial judge could successfully moderate a panel discussion of experts, which would only exacerbate and not ameliorate juror confusion. The proposed procedure would also result in unnecessary delay.

Furthermore, it would be most difficult for trial attorneys to effectively object and advocate during a panel discussion of experts. Again, such a procedure would only result in making trials longer, more complex and potentially more confusing as opposed to simplifying matters.

Rule 2.513 (K)

I am also troubled by the proposal to allow jurors to talk about the case during recesses, which flies in the face of established custom. This proposal presents a Pandora's box, as permitting such discussions during recesses increases the temptation of further such discussions at the family dinner table, the fitness club, or at the barber shop.

Such extracurricular conversations also carry with them the danger that jurors, despite their best efforts to remain impartial, could begin to formulate opinions on the evidence, the case, and the outcome.

Rule 2.513(D)

Allowing "interim commentary at appropriate junctures of the trial" seems wholly unnecessary and time consuming. Such a procedure would also invite jurors to begin to make final decisions before the trial is over.

Rule 2.513 (I)

The proposal to allow jurors to ask questions, with appropriate procedural safeguards, is an excellent idea. As a federal prosecutor, I have tried several trials in which the jury is permitted to submit written questions to the judge after counsel have questioned each witness.

The judge first invites counsel to approach the bench out of the jury's hearing, to review each question and interpose any objections thereto. The judge then determines whether the question is permissible and relevant, and then, if appropriate, the judge asks the witness the question.

Usually, the jurors' questions are relevant, and right on the mark, as jurors are guided by considerations of common sense and not by legal concerns or strategy. Furthermore, jurors who are

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permitted to ask questions of witnesses are more apt to remain engaged during the trial and therefore are more apt to be attentive.

Thank you again for affording me the opportunity to comment on the proposed changes to the Michigan Court Rules.

Very truly yours,

A handwritten signature in black ink that reads "J. Michael Buckley". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

J. MICHAEL BUCKLEY

JMB/mb